IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4392 of 2000
For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Appearance: MR MIHIR H JOSHI for Petitioner
MR AKSHAY H MEHTA for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/08/2000

ORAL JUDGEMENT: (Per B.C. Patel, J.)

1. The petitioner by filing this petition under Article 226 of the Constitution of India has challenged the condition No.5 in a letter addressed to it, resulting in liability to pay interest for reexporting warehoused goods which comes to the tune of Rs.1,15,00,000/- as the goods were warehoused for a period of more than six months.

2. Short facts are as under :-

The petitioner imported 5215.250 MT copper concentrate - Cero Dominator falling under Sub-heading No.2603.00, a raw material in loose packing for

manufacturing of Copper Cathode - Chapter heading No.7404.11. The goods were warehoused in private Custom bonded warehouse.

3. The raw material was to be utilised. However, as per the Schedule, the Project could not be commissioned and as per the project report and as per the Survey, before December, 2000, there were no feasibilities of utilising the raw material and hence, the petitioner requested the Deputy Commissioner, Central Excise and Customs for reexporting of the aforesaid goods vide letter dated February 21, 2000, vide Annexure `D'. It appears that the Deputy Commissioner, Central Excise and Customs Division I, Ankleshwar, by his letter dated 2nd May, 2000, vide Annexure `I', communicated that the application for reexport has been allowed on certain conditions. Condition No.5, which was objected and gave rise to filing of the petition is as under :-

> "... 5. The interest at the applicable rate is to be paid before removal of the warehoused goods...."

It is contended by learned counsel for the petitioner that in the instant case, the goods were imported, however, were kept in a bonded warehouse and, therefore, there was no question of payment of customs duty. The goods were reexported, and, therefore, there was no question of payment of duty at any point of time. If there was no question of payment of duty, the question of payment of interest does not arise. It appears that the Revenue demanded interest in view of the provisions contained in Section 61 of the Customs Act, 1962. The relevant provision is as hereunder :-

> "Section 61.Period for which goods may remain warehoused.-(1) ...
> (a) ... ...
> (b) ... ...
> (2) Where any warehoused goods -
>
> (i) ... ...
>
> (ii) specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of six months, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions

> of section 15 on the warehoused goods, for the period from the expiry of the said six months till the date of payment of duty on the warehoused goods:
>
> ... ... "

Section 61(2) refers to capital goods intended for use in any hundred per cent export oriented undertaking and any other goods than the capital goods in India for use in any hundred per cent export oriented undertaking. As the goods were meant for home consumption, sub-clause (ii) of clause (2) of Section 61 will have to be considered. Sub-clause (ii) refers to the two important aspects, viz., (i) amount of duty payable at the time of clearance of the goods; and (ii) till the date of payment of duty on the warehoused goods. Thus, it is clear that if the goods remained in a warehouse beyond a period of six months, same shall be liable to interest on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of Section 15 on the warehoused goods, for the period from the expiry of the said six months till the date of payment of duty on the warehoused goods. Thus, the amount of interest which can be recovered or which can be claimed under sub-clause (ii) of clause (2) of Section 61 could be only on the warehoused goods which were liable to duty and the amount of interest is required to be paid for the period from the expiry of six months from lodging the goods in warehouse till the date of payment of duty on such goods. It is an admitted position in the instant case that there is so question of payment of duty as the goods have been reexported and therefore, question of payment of interest would naturally not arise.

4. Our attention is drawn to a decision of the Apex Court in case of Pratibha Processors v. Union of India, reported in 1996 (88) E.L.T. 12. The Court has pointed out as under :-

> "... It is implicit from the language of Section 61(2) of the Act that the interest shall be payable on the amount of duty "payable or due" on the warehoused goods for the period from the expiry of period specified or granted till the date of clearance of the goods from the warehouse. In this case, on the date of clearance of the goods, no duty is payable. The goods

....

> Calculation of interest is always on the principal amount. The "interest" payable under Section 61(1)(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable / payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(1)(2) of the Act...."

The Court further pointed out :-

> "... When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable. The interest provided under Section 61(2) has no independent or separate existence...."

Thus, question of payment of interest does not arise. Mr.Shah appearing for the Revenue submitted that in the case before the Apex Court, there was exemption and, therefore, there was no question of payment of interest, but in the instant case, if the goods would have been cleared, the petitioner would have been held liable to pay interest. Suffice it to say that if the goods were reexported and no duty was levied, Section 61(2) cannot be invoked.

5. In case of Commissioner of Customs, Chennai v. Jayathi Krishna & Co., reported in 2000 (119) E.L.T. 4, the Apex Court reiterated the principle aforesaid and pointed out that if the principal is not payable, so is the interest on it. Thus, interest under Section 61(2) of the Customs Act has no independent or separate existence.

6. In view of what we have stated hereinabove, the Condition No.5 in letter Annexure `I' requires to be quashed and set aside. Rule is accordingly made absolute. No order as to costs.

10th August, 2000 (B.C. Patel, J.)

(P.B. Majmudar, J.)

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(apj)